

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 421 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

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VESTABHAI SAVLABHAI RATHVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 421 of 2002
MR MP SHAH for Petitioner No. 1
MS. KRUTI M SHAH for Petitioner No. 1
MR SS PATEL Ld. APP for Respondent No. 1
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2002

ORAL JUDGEMENT

Heard the learned counsel for the appellant and
Mr. SS Patel learned APP for the respondent-State.

Appeal is admitted.

With the consent of the learned counsel this appeal is finally heard today.

This appeal is preferred against the order passed by the ld. Addl. Sessions Judge, Vadodara camping at Chhota-Udaipur whereby he has directed to destroy the muddamal produced before the Court during trial. One of these articles is a Rifle Bridge load Single barrel.

Because of the incident occurred at 4.15A.M. on 28.3.1993, two different persons were charge-sheeted and tried by the court of Sessions. Firstly, accused Nanaka Nathu Bhil, resident of village Rezva, Tal. Chhota-Udaipur was tried vide Sessions Case No. 4/1994 and was acquitted. Thereafter, other Jethara Mansingh Bhil, resident of village Rezva, Tal. Chhota-Udaipur was tried as he was charge-sheeted frequently and has been also acquitted by judgment and order dated 21.5.1998.

It is not a matter of dispute that single barrel rifle owned by the father of the present appellant was produced before the Court of Sessions, the same was not used in the alleged offence. It was found in a broken condition. It is submitted that ld. Sessions Judge while dealing with both the Sessions Cases, have not passed appropriate legal order qua disposal of the muddamal rifle. Obviously, at the end of trial of Sessions Case No. 4 of 1994, no formal order was required to be passed as the other accused was to be tried as and when arrested and charge-sheeted.

By the impugned order dated 21/5/1998 ld. Sessions Judge directed that the muddamal be destroyed. It seems that this order has been passed without proper application of mind. One of the muddamal article seized by the I.O. during the course of investigation is a single barrel bridge load rifle. True copy of the licence issued by the Sub-Divisional Magistrate, Chhota Udaipur indicates that the present appellant is a valid licence holder and, therefore, the owner of the weapon and after proper inquiry, the competent authority has held the present appellant the owner of the weapon in question as successor and the authority has made necessary endorsement in column no. 9 of the licence. Correctness of this fact is not under challenge. This rifle being a property of third person who was neither an accused nor the complainant of the sessions case, without offering an opportunity to the owner of the weapon, no formal order of distruction could have been passed. So, the order is bad in law.

Ld. Sessions Judge, if was of the opinion that this muddamal rifle should not be handed over to anybody than the appropriate order of confiscation of the weapon by assigning reasons and after affording an opportunity to the owner of the weapon should have passed a formal order of confiscation of the weapon and the said weapon should have been handed over to the State Armory. In the present case, the appellant, prima-facie, seems to be person entitled of the weapon in question, however, for this purpose, the appropriate summary enquiry should be held as provided in the Code of Criminal Procedure and after affording an opportunity to the present appellant and the State, the order of disposal of muddamal requires to be passed.

For short, the order under challenge being an order not in accordance with law and the same is passed without affording an appropriate opportunity to the owner of the weapon. The decision of the ld. Sessions Judge to destroy the muddamal rifle bridge load single barrel is hereby quashed and set aside. Ld. Sessions Judge is directed to hold a summary enquiry at the earliest and should pass appropriate orders as expeditiously as possible. It is important to note that the appellant has to produce the weapon for inspection before the competent authority. If the hearing of the enquiry is protracted, than it will be open for the ld. Sessions Judge to hand over this weapon temporarily on surety bond, so that the applicant can get the weapon inspected. Repairing of the weapon if required, also would not be a bar for the appellant in the meanwhile.

This appeal is disposed of accordingly. DS
Permitted.

(C.K. BUCH, J.)
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